

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON**

STATE OF WASHINGTON,  
  
Plaintiff,  
  
v.  
  
THE GEO GROUP, INC.,  
  
Defendant.

CIVIL ACTION NO. 3:17-cv-05806-RJB

**STATE OF WASHINGTON'S  
MOTION TO REMAND**

NOTE ON MOTION CALENDAR:  
December 1, 2017

ORAL ARGUMENT REQUESTED

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## I. INTRODUCTION

The State of Washington (“Washington”) filed a complaint in state court to require THE GEO GROUP, INC. (“GEO”), the private operator of a for-profit detention facility, to comply with its obligations to Washington workers under state law. GEO removed this matter to federal court seeking to avail itself of federal jurisdiction by cloaking its business decisions in the color of federal law.

GEO’s attempt to remove under the “federal officer” removal statute fails because it did not operate under a federal directive: GEO made the discretionary decision to pay workers \$1 per day, in violation of state law and its own contract with the federal government. GEO also cannot sustain its burden to demonstrate a colorable federal defense, as no form of preemption displaces Washington’s minimum wage law. This case does not turn on any substantial dispute over the construction of federal law, and no diversity of parties exists. GEO cannot meet its burden of proof to sustain removal, and this matter should be remanded to state court for a determination of Washington’s two state-law causes of action.

## II. FACTUAL BACKGROUND

GEO is the exclusive owner and operator of the Northwest Detention Center (“NWDC”) in Tacoma, Washington.<sup>1</sup> GEO contracts with U.S. Immigration and Customs Enforcement (“ICE”) to detain non-citizens pending resolution of their civil immigration proceedings. *See* Baker Decl., Ex. A HSCEDM-15-D-00015 (“ICE-GEO Contract”).<sup>2</sup> GEO provides detention

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<sup>1</sup> NWDC is a Contract Detention Facility (“CDF”) exclusively owned and operated by GEO. *See Compliance Inspection*, January 10-12, 2012, U.S. Department of Homeland Security Office of Detention Oversight at <https://www.ice.gov/doclib/foia/odo-compliance-inspections/2012northwest-detention-center-tacoma-wa-jan10-12.pdf>.

<sup>2</sup> Despite relying heavily on its contract with ICE in its Notice of Removal to Federal Court (“Removal Notice”), ECF 1, GEO did not provide the Court with a copy of the contract. Instead, GEO cites to a declaration of counsel where counsel purports to recite excerpts of GEO’s contract with ICE. *See* Mell Decl. ¶ 1.3, ECF 3. Without a copy of the contract, neither Washington nor the Court can confirm the contract language (or evaluate it in context). Washington attaches a copy of the 2015–2025 contract between GEO and ICE that was obtained

1 services to ICE pursuant to a contract that requires GEO to comply with “applicable federal,  
2 state and local labor laws and codes.” Baker Decl., Ex. A at 44. Under the contract, GEO is  
3 “expected to be knowledgeable” of all “statutory” and “regulatory” constraints under state and  
4 local law, and must “perform in accordance with the most current version of the constraints.” *Id.*  
5 at 43-44; *see also id.* at 85 (“The facility . . . shall be designed, constructed, *operated*, and  
6 maintained in accordance with all applicable federal, state, and local laws, regulations, codes,  
7 guidelines, and policies.”) (emphasis added). Confirming the application of state law, the  
8 contract’s “Ambiguities” section provides as follows:

9 “All services must comply with the Performance Work Statement  
10 (PWS) [in the contract] and all applicable federal, state, and local  
11 laws and standards. Should a conflict exist between any of these  
standards, the most stringent shall apply.”

12 *Id.* at 52.

13 The ICE-GEO contract also sets the rates ICE will pay for specific expenses and services,  
14 including bed space, transportation services, fuel costs, and overtime. *Id.* at 1-43. No line item  
15 sets the amount that ICE must reimburse for GEO’s employee labor costs; those amounts must  
16 be paid by GEO from the overall price it charges to operate the facility.

17 GEO’s contract additionally directs it to “manage a detainee work program” that is  
18 “developed by the Contractor.” *Id.* at 82. The contract does not define how GEO must implement  
19 the detainee work program, instead granting GEO discretion to design and adopt the program,  
20 provided it complies with all other laws. *Id.* at 44, 52, 85. The contract provides that ICE will  
21 reimburse GEO up to \$1 day for compensation made to detainee-workers in the detainee work  
22 program. *See id.* at 5, 9, 12, 16.

23 GEO uses the detainee work program as a replacement for all non-security staff at  
24 NWDC. Compl. ¶¶ 14.1-14.9, ECF 1-1 at 5. GEO uses detainee workers to cook all the food

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25 through the Freedom of Information Act. Baker Decl., Ex. A (redactions as produced by the  
26 government). Washington’s citations to the “ICE-GEO Contract” are to this Exhibit.



1 served to detainees, operate the laundry facility for clothing and bedding, clean most areas of  
2 NWDC, and assist in distributing commissary. *Id.* GEO pays detainees who perform this labor  
3 \$1 per day regardless of hours worked. *Id.*

4 Washington alleges that GEO's decision to pay \$1 per day to detainee-workers, who  
5 qualify as "employees" for purposes of Washington law, is a violation of state statutory and  
6 common law. In seeking declaratory judgment and disgorgement of unjustly gained profits,  
7 Washington seeks to protect its economy and workers – both inside NWDC and in the greater  
8 Tacoma area – from unfair labor practices that unfairly game the system and depress the  
9 economy. Washington alleges state-law harms including the loss of employment opportunities  
10 for non-detainees, exploitation of detainee-workers, and the undermining of our State's long  
11 history of worker protections.

### 12 III. ARGUMENT

13 GEO claims to qualify for "federal officer" removal and attempts to remove this action  
14 in the interest of federal "uniformity." Removal Notice at 13-17, 21, 28-29. However, GEO is a  
15 private company that made the discretionary business decision at the heart of this dispute, and a  
16 private litigant's bare interest in a uniform, nationwide regulatory landscape is not a basis for  
17 federal jurisdiction. GEO's diversity argument fails because Washington is a real party in interest  
18 and not a citizen of Washington State for purposes of diversity jurisdiction. No removal  
19 jurisdiction exists.

#### 20 A. GEO Cannot Avail Itself of Federal Officer Removal Because It Made a 21 Discretionary Business Decision for Which It Lacks a Colorable Defense Under 22 Federal Law

23 GEO's primary argument is that it qualifies for "federal officer removal" under 28 U.S.C.  
24 § 1442(a)(1). This argument is in error.

25 The purpose of the federal officer removal statute is "to ensure a federal forum in any  
26 case where a federal official is entitled to raise a defense arising out of his duties." *Arizona v.*

1 *Manypenny*, 451 U.S. 232, 241 (1981). “An entity seeking removal under § 1442(a)(1) bears  
2 the burden of showing ‘that (a) it is a ‘person’ within the meaning of the statute; (b) there is a  
3 causal nexus between its actions, taken pursuant to a federal officer’s directions, and plaintiff’s  
4 claims; and (c) it can assert a ‘colorable federal defense.’” *Goncalves v. Rady Children’s Hosp.*  
5 *San Diego*, 865 F.3d 1237, 1244 (9th Cir. 2017).<sup>3</sup> GEO cannot meet the second or third elements  
6 because there is no causal nexus between GEO’s actions and a federal officer’s direction nor any  
7 colorable federal defense to Washington’s claims.

8 **1. There is no causal nexus between any federal officer’s direction and GEO’s**  
9 **choice to pay \$1 per day**

10 In order to remove this case pursuant to § 1442, GEO must show “that the challenged  
11 acts occurred *because of* what they were asked to do by the Government.” *Goncalves*, 865 F.3d  
12 at 1245 (citation omitted). It is not enough that GEO is a federal government contractor. *See*  
13 *Holdren v. Buffalo Pumps, Inc.*, 614 F. Supp. 2d 129, 140-41 (D. Mass. 2009) (“[A] crucial  
14 jurisdictional question in [private government contractor cases] is whether the contractor’s  
15 actions were undertaken at the direction of the federal government at all.”); *Freiberg v.*  
16 *Swinerton & Walberg Prop. Servs., Inc.*, 245 F. Supp. 2d 1144, 1152 n.6 (D. Colo. 2002) (“Given  
17 the purpose of § 1442, . . . it should be read expansively only when . . . individual federal  
18 officials, and not government contractors, [are] at issue.”); *Prewett v. Goulds Pumps (IPG)*, No.  
19 C09-0838 RSM, 2009 WL 2959877, at \*3 (W.D. Wash. Sept. 9, 2009) (“[W]here a private  
20 company violates state law at its own discretion rather than at the government’s discretion and  
21 in accordance with federal duties, it cannot be said that there is a sufficient federal interest to  
22 justify a federal forum even using the broadest of interpretations.”).

23 Instead, to show that a defendant “acted under” a federal officer for purposes of § 1442,  
24 “[t]he removing defendant must by direct averment exclude the possibility that [the action] was

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25 <sup>3</sup> “The courts of appeals have uniformly held that corporations are ‘person[s]’ under  
26 § 1442(a)(1).” *Goncalves*, 865 F.3d at 1244. GEO is a “person” for purposes of § 1442(a)(1).

1 based on acts or conduct of his not justified by his federal duty.” *Cabalce v. VSE Corp.*, 922 F.  
2 Supp. 2d 1113 (D. Haw. 2013), *aff’d sub nom. Cabalce v. Thomas E. Blanchard & Assocs., Inc.*,  
3 797 F.3d 720 (9th Cir. 2015). “[C]ourts generally find that persons are ‘acting under’ a federal  
4 officer if acts forming the basis of the state suit were performed pursuant to a federal officer’s  
5 direct orders or comprehensive and detailed regulations.” *In re Nat’l Sec. Agency Telecomms.*  
6 *Records Litig.*, 483 F. Supp. 2d 934, 943 (N.D. Cal. 2007; *Cabalce*, 922 F. Supp. 2d at 1122  
7 (same). “[T]he removing defendant must show that the government *supervised* or *influenced* the  
8 way in which the defendant performed the allegedly culpable activities.” *State v. Monsanto Co.*,  
9 No. C17-53RSL, 2017 WL 3492132, at \*4 (W.D. Wash. July 28, 2017). Acts occurring under  
10 the “general auspices of federal direction” are insufficient. *Cabalce*, 797 F.3d at 729.

11 Under this standard, GEO must show that (1) its decision to pay detainee-workers \$1 per  
12 day was taken pursuant to a federal officer’s direction, and (2) the federal directive is causally  
13 connected to Washington’s claims. *Goncalves*, 865 F.3d at 1244. GEO fails to show either.

14 First, GEO did not “act under” a federal officer’s direction when setting the \$1 per day  
15 rate. GEO’s contract directs it to “manage a detainee work program” that is “developed *by the*  
16 *Contractor*.” Baker Decl., Ex. A at 82 (emphasis added). The work program must comply with  
17 ICE’s 2011 Performance-Based National Detention Standards (“PBNDS”). *Id.* In turn, the  
18 PBNDS provide GEO with broad, express discretion over the operation and terms of the detainee  
19 work program. *See* Baker Decl., Ex. B at 5.8(I) (granting a contractor permission to “either  
20 conform to these procedures or adopt, adapt or establish alternatives, provided they meet or  
21 exceed the intent represented”); *id.* at 5.8(V)(D) (allowing GEO to develop site-specific rules  
22 for selecting work detail volunteers); *id.* at 5.8(V)(E) (permitting GEO to establish “temporary  
23 work details” ranging in length and scope); *id.* at 5.8(V)(H) (requiring GEO to establish work  
24 schedule within general limits); *id.* at 5.8(V)(N) (authorizing GEO to “develop and institute  
25 appropriate training” for detainee workers); *id.* at 5.8(V)(O) (requiring GEO to develop and  
26 implement “procedures for immediately and appropriately responding to on-the-job injuries”).

1 Consistent with granting GEO discretion over the terms of work program, ICE expressly  
2 permits GEO to set the rate of pay. *Id.* at 5.8(V)(K). ICE tells GEO to compensate detainees “in  
3 accordance with *the facility’s* standard policy.” *Id.* (emphasis added). The only limit on GEO’s  
4 discretion is that detainees be paid “at least \$1.00 (USD) per day.” *Id.* Nowhere in the contract  
5 or other applicable standards does ICE direct GEO to pay \$1 per day or set that amount as a  
6 ceiling.<sup>4</sup>

7 Second, and fatal to GEO, the plain and unambiguous language of its contract requires it  
8 to comply with state law and destroys any causal nexus between a federal officer’s direction and  
9 its choice to pay \$1 per day. GEO’s contract requires it to comply with “applicable federal, state  
10 and local labor laws and codes.” Baker Decl., Ex. A at 44; *id.* at 85 (“The facility . . . shall be  
11 designed, constructed, *operated*, and maintained in accordance with all applicable federal, state,  
12 and local laws, regulations, codes, guidelines, and policies.”) (emphasis added). And ICE  
13 expressly instructs GEO to apply the “most stringent” of any federal, state, or local law  
14 applicable to NWDC. *Id.* at 52. It is hard to imagine how ICE could have used clearer language  
15 directing GEO to know and comply with state law.

16 Courts presented with similar circumstances have routinely found that private defendants  
17 have failed to show the requisite “causal nexus” where the federal officer provided no direct  
18 order mandating the conduct alleged to violate state law. *See Cabalce*, 797 F.3d at 728  
19 (remanding after finding a lack of any evidence of the requisite federal control or supervision  
20

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21 <sup>4</sup> GEO’s reference to the ICE “Contracting Officer” is not to the contrary. GEO complains  
22 that it may not be reimbursed for paying more than \$1 per day “without prior approval by the  
23 Contracting Officer.” Removal Notice at 16 (citing Baker Decl., Ex. A at 97). The context of  
24 this standard contract term demonstrates that is wholly irrelevant to the scope of GEO’s duties  
25 under federal or state law. For example, similar reimbursement terms require the Contracting  
26 Officer to pre-approve expenses over certain amounts for staff overtime, fuel costs, and lodging  
rates. Baker Decl., Ex. A at 4, 7. GEO cannot plausibly argue that these contract terms entitle it  
to flout federal and state overtime laws, or to refuse to pay a merchant for fuel or lodging that it  
obtains but that the Contracting Officer does not approve. A contract term governing the  
reimbursement process is just that.

1 over the defendant contractor’s plan to destroy explosives that was central to the state claims);  
2 *Mobley v. Cerro Flow Prods., Inc.*, No. 09–697–GPM, 2010 WL 55906, at \*5 (S.D. Ill. Jan. 5,  
3 2010) (remanding where company controlled “the actual, basic operation of the plant” and the  
4 military did not specifically direct the manner of chemical disposal); *Parks v. Guidant Corp.*,  
5 402 F. Supp. 2d 964, 971 (N.D. Ind. 2005) (remanding where manufacturer of medical device  
6 failed to establish that federal agency “effectively directed them to design, manufacture or sell  
7 the device at issue in a manner that gave rise to the claims in this case”).

8 In other words, acts occurring under the general auspices of federal direction are  
9 insufficient for removal. *See, e.g., Freiberg*, 245 F. Supp. 2d at 1155-56 (defense contractor  
10 could not remove case even though plaintiffs alleged contractor failed to comply with state  
11 requirements regarding safe construction practices while building a nuclear weapons facility for  
12 the federal government because the contractor failed to show that the federal government's  
13 “direction and control of their activities directly interfered with their ability to fulfill their state  
14 law obligation”); *Arness v. Boeing N. Am., Inc.*, 997 F. Supp. 1268, 1273-74 (C.D. Cal. 1998)  
15 (finding insufficient causal nexus to support removal where government specifications required  
16 Boeing to clean mechanical engines with a toxic substance but did not specify how Boeing was  
17 to dispose of the cleanser and Boeing’s disposal of the toxic substance was the basis for the  
18 plaintiffs’ claims). *Cf. Winters v. Diamond Shamrock Chem. Co.*, 149 F.3d 387, 398-99 (5th Cir.  
19 1998) (upholding removal under § 1442 where defendants made Agent Orange pursuant to the  
20 exact specifications of the Department of Defense and where defendants were compelled to  
21 deliver the chemicals under threat of criminal sanctions).<sup>5</sup>

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22  
23 <sup>5</sup> Consistent with these precedents, there is a body of caselaw holding that insurance  
24 carriers that administer health insurance for federal employees as part of the Federal Employee  
25 Health Benefit Act (“FEBHA”) sufficiently “act under” federal officers for purposes of removal.  
26 These holdings turn on the detailed and comprehensive rules that apply to the subrogation claims  
where such carriers (1) have been instructed to pursue subrogation claims; (2) the monies sought  
to be recouped are paid from a special fund in the U.S. Treasury into which the government pays  
about 75% of premiums; and (3) the funds are owned by the federal government, not the carriers,

1        These cases apply here. GEO cannot sustain its claim that it paid detainee-workers \$1  
2 per day “*because of*” anything it was “asked to do by the Government,” *see Goncalves*, 865 F.3d  
3 at 1245, and therefore fails to show that its actions have a sufficient “causal nexus” to a federal  
4 directive to sustain removal under § 1442(a)(1).

## 5            **2.        Preemption Is Not a Colorable Federal Defense to Washington’s Claims**

6        GEO raises a mix of preemption doctrines and argues that Washington’s claims are  
7 preempted under express, field, and/or conflict preemption. *See* Removal Notice at 17-25. None  
8 of the preemption doctrines applies, and GEO has no colorable defense to Washington’s claims.

9        “Consideration of the issues arising under the Supremacy Clause start[s] with the  
10 assumption that the historic police powers of the states [are] not to be superseded by . . . Federal  
11 Act unless that [is] the clear and manifest purpose of Congress.” *Williamson v. Gen. Dynamics*  
12 *Corp.*, 208 F.3d 1144, 1149 (9th Cir. 2000) (internal quotation marks omitted). Courts are  
13 reluctant to infer preemption. *N.L.R.B. v. Calkins*, 187 F.3d 1080, 1095 (9th Cir. 1999). The  
14 Ninth Circuit recognizes three categories of preemption: “(1) *express preemption* – where  
15 Congress explicitly defines the extent to which its enactments preempt state law; (2) *field*  
16 *preemption* – where state law attempts to regulate conduct in a field that Congress intended the  
17 federal law exclusively to occupy; and (3) *conflict preemption* – where it is impossible to comply  
18 with both state and federal requirements, or where state law stands as an obstacle to the  
19 accomplishment and execution of the full purposes and objectives of Congress. *Williamson*, 208  
20 F.3d at 1149 (internal quotation marks omitted). Regardless of the type of preemption analysis,  
21 congressional intent to preempt state law must be clear and manifest. *Arizona v. United States*,  
22 567 U.S. 387, 400 (2012). Here, none of the preemption categories provide GEO a colorable  
23 defense to Washington’s claims.

24  
25 \_\_\_\_\_  
26 and the federal government decides how to use any surplus funds. *Goncalves*, 865 F.3d at 1247  
(citing *Jacks v. Meridian Resource Co., LLC*, 701 F.3d 1224 (8th Cir. 2015)).

1                   **a.       GEO does not allege a colorable express-preemption defense**

2           GEO argues that the ICE-GEO contract and Immigration Reform Control Act (“IRCA”)  
3 expressly preempt Washington’s claims. Removal Notice at 23-25. Neither of these arguments  
4 has merit.

5                   **i.       The ICE-GEO contract cannot preempt state law**

6           GEO’s claims that “the Statement of Work” in its contract “contains preemptive  
7 language,” but this argument falls flat. Removal Notice at 17. Even if GEO’s contract clearly  
8 limited it to paying detainees \$1 per day – and it does not – contract terms, in and of themselves,  
9 cannot preempt state law. *Empire HealthChoice Assur. Inc. v. McVeigh*, 396 F.3d 136, 143 (2d  
10 Cir. 2005) (“[W]e generally take for granted that it is *law*, and not a mere contract, that carries  
11 [any] preemptive force.”). GEO’s suggested “preemption by contract” would be “highly  
12 problematic, and probably unconstitutional, because only federal *law* may preempt state and  
13 local law.” *Id.* “There is no constitutional basis for making the terms of contracts with private  
14 parties similarly ‘supreme’ over state law.” *Id.* (citing U.S. Const. Art. VI, cl. 2). GEO’s contract  
15 does not preempt state law.

16                   **ii.       IRCA does not preempt generally applicable state laws that**  
17                   **protect workers**

18           GEO next cites to language in the Immigration Reform and Control Act (“IRCA”) in an  
19 attempt to find a colorable defense. GEO’s attempt fails. IRCA prohibits employers from  
20 knowingly hiring or recruiting unauthorized aliens to work. 8 U.S.C. § 1324a(a). In doing so,  
21 IRCA permits only the federal government to sanction employers that violate its prohibition and  
22 expressly “preempt[s] any State or local law imposing civil or criminal sanctions . . . upon those  
23 who employ, or recruit . . . unauthorized aliens.” 8 U.S.C. § 1324a(h)(2).

24           Here, Washington is not attempting to sanction GEO for employing undocumented  
25 workers. Instead, Washington seeks to enforce its state minimum wage. It is well established  
26 that states can enforce generally applicable regulations that protect workers without violating

1 IRCA. *See Chamber of Commerce of U.S. v. Whiting*, 563 U.S. 582, 600 (2011) (holding that  
2 “IRCA expressly preempts some state powers dealing with the employment of unauthorized  
3 aliens and it expressly preserves others” and finding no preemption for an Arizona licensing  
4 law); *Incalza v. Fendi N. Am., Inc.*, 479 F.3d 1005, 1013 (9th Cir. 2007) (holding that IRCA did  
5 not preempt California labor law that forbids employers from terminating an employee without  
6 good cause even if that law applied to an employer who terminated an immigrant who  
7 temporarily lost their legal work status); *Madeira v. Affordable Hous. Found., Inc.*, 469 F.3d  
8 219, 237-38 (2d Cir. 2006) (holding that there is no basis for concluding that Congress clearly  
9 intended IRCA to preempt established state law affording workers protections). In fact, federal  
10 law similarly requires workers be paid the minimum wage regardless of their work authorization.  
11 *See* U.S. Dep’t of Labor, Wage and Hour Division, Fact Sheet #48: Application of U.S. Labor  
12 Laws to Immigrant Workers (July 2008), *available at*  
13 <https://www.dol.gov/whd/regs/compliance/whdfs48.htm> (declaring DOL will continue to  
14 enforce federal minimum wage laws “without regard to whether an employee is documented or  
15 undocumented”). If IRCA’s preemption clause is read as GEO argues, IRCA would create an  
16 incentive for employers to hire undocumented workers so they could pay them substandard  
17 wages, and ignore all state labor safety and protection laws. IRCA does not command this absurd  
18 result.

19 Nor does IRCA preempt Washington’s claim for unjust enrichment. When a federal law  
20 contains an express preemption clause, courts “focus on the plain wording of the clause, which  
21 necessarily contains the best evidence of Congress’ preemptive intent.” *Whiting*, 563 U.S. at 594  
22 (quotations omitted). Under a plain language reading of IRCA’s preemption clause, Congress  
23 only intended to preempt state action that would impose sanctions “upon those who employ, or  
24 recruit or refer for a fee for employment” undocumented immigrants. 8 U.S.C. § 1324a(h)(2).  
25 Washington’s unjust enrichment claim does not seek to sanction GEO for employing  
26



1 undocumented immigrants, but rather to impose liability for GEO's failure to pay detainee-  
2 workers a fair wage. GEO's argument that IRCA preempts Washington's claims fails.

3 **b. GEO does not allege a colorable field preemption defense**

4 GEO argues that it has a colorable field preemption defense because Congress has broad  
5 authority over immigration and because the Fair Labor Standards Act ("FLSA") "control[s] the  
6 field of payment of detainee activities." Removal Notice at 20. These arguments significantly  
7 overreach, and field preemption is not at issue here.

8 "[S]tate law is pre-empted . . . if federal law so thoroughly occupies a legislative field 'as  
9 to make reasonable the inference that Congress left no room for the States to supplement it.'" *Nat'l Fed'n of the Blind v. United Airlines Inc.*, 813 F.3d 718, 733 (9th Cir. 2016) (citing  
10 *Cipolione v. Liggett Group Inc.*, 505 U.S. 504, 516 (1992)). However, "[i]n areas without  
11 pervasive regulations or other grounds for preemption, the state standard . . . remains applicable."  
12 *Id.* at 734 (holding that the Federal Aviation Administration's regulations could not serve as a  
13 basis for field preemption where the regulatory scheme does not expressly address the cause of  
14 the state law claim). And, "[w]here, as here, the field which Congress is said to have pre-empted  
15 has been traditionally occupied by the States, we start with the assumption that the historic police  
16 powers of the States were not to be superseded by the Federal Act unless that was the clear and  
17 manifest purpose of Congress." *Gade v. Nat'l Solid Wastes Mgmt. Ass'n*, 505 U.S. 88, 116  
18 (1992) (citation omitted). *See RUI One Corp. v. City of Berkeley*, 371 F.3d 1137, 1150 (9th Cir.  
19 2004) ("States possess broad authority under their police powers to regulate the employment  
20 relationship to protect workers within the State. Child labor laws, minimum and other wage laws,  
21 laws affecting occupational health and safety . . . are only a few examples.") (quoting *Metro.*  
22 *Life Ins. Co. v. Massachusetts*, 471 U.S. 724, 756 (1985)).  
23

24 Here, GEO argues field preemption based on a scattering of federal interests and  
25 authorities: (1) the federal government's "broad, undoubted power over the subject of  
26 immigration," Removal Notice at 19; (2) a congressional appropriation that provides funding for

1 immigration enforcement, *id.* at 19-20; and (3) cases holding the FLSA or other state minimum  
2 wage laws inapplicable to other immigration detention facilities, *id.*

3       The first two sources are simply insufficient to sustain a colorable claim of field  
4 preemption. Though Congress has broad authority regarding immigration, such authority cannot  
5 displace every generally applicable state labor law that touches anyone involved in the  
6 immigration system. *Cf. Arizona*, 567 U.S. at 401 (finding field preemption where “[t]he federal  
7 statutory directives provide a full set of standards governing alien registration, including the  
8 punishment for noncompliance” and as was designed as a “harmonious whole”). And GEO’s  
9 reliance on a 1979 appropriations bill that predates the existence of private immigration detention  
10 facilities is equally unavailing. At most, the appropriations sets the amount ICE can reimburse  
11 an entity for detainee-workers that participate in the Voluntary Work Program. It cannot and  
12 does not occupy the legislative field of laws governing worker protections and safety. *See United*  
13 *States v. Nixon*, 839 F.3d 885, 887-888 (9th Cir. 2016) (affirming that an appropriations rider  
14 simply restricts an agency’s ability to use certain funds and does not invalidate existing law).

15       Nor may GEO show field preemption by reference to the FLSA, as the FLSA only  
16 preempts state laws that are *less* beneficial to the employee. *See Pac. Merch. Shipping Assoc. v.*  
17 *Aubry*, 918 F.2d 1409, 1425 (9th Cir.1990) (affirming that “the purpose behind the FLSA is to  
18 establish a national *floor* under which wage protections cannot drop, not to establish absolute  
19 uniformity in minimum wage . . . standards nationwide”). As the Ninth Circuit has held, when  
20 Congress enacted the FLSA it “made clear its intent not to disturb the traditional exercise of the  
21 states’ police powers with respect to wages and hours more generous than the federal standards.”  
22 *Id.* (citing 29 U.S.C. § 218 (directing that “[n]o provision of [the FLSA] or of any order  
23 thereunder shall excuse noncompliance with any Federal or State law or municipal ordinance  
24 establishing a minimum wage higher than the minimum wage established under this chapter”)).

25       Further, while Washington’s minimum wage laws were originally modeled on the FLSA,  
26 federal law serves only as “persuasive authority” when construing the Washington’s minimum

1 wage laws, and only then for provisions that are similar to those found in the FLSA. *Inniss v.*  
2 *Tandy Corp.*, 7 P.3d 807, 811 (Wash. 2000) (Washington courts “may consider” federal  
3 interpretations of “comparable provisions”); *see also Dep’t of Labor & Indus. v. Lanier Brugh*,  
4 147 P.3d 588, 594 (Wash. App. 2006) (holding that the FLSA did not preempt state wage laws  
5 establishing *minimum* wages nor protect private companies from paying more than the federal  
6 minimum wage to comply with local wage laws); *Dep’t of Labor & Indus. v. Common Carriers*,  
7 762 P.2d 348, 349-350 (Wash. 1988) (holding that FLSA did not preempt state wage laws and  
8 requiring federal contractor to comply with Washington’s minimum wage laws)).

9 The purpose of Washington’s law is substantially broader than that of the FLSA.  
10 Washington’s Legislature enacted its minimum wage laws nearly 25 years before the federal  
11 government, proclaiming that, “the establishment of a minimum wage for employees is a subject  
12 of vital and imminent concern to the people of this state.” Wash. Rev. Code § 49.46.005(1); *see*  
13 *also Becerra v. Expert Janitorial*, 332 P.3d 415, 420 (Wash. 2014) (holding that Washington’s  
14 minimum wage laws are to be “liberally construed”). Washington’s Legislature has declared that  
15 minimum wage laws are necessary not only to protect “the health, safety and the general welfare  
16 of the citizens of this state,” but also to “encourage employment opportunities within the state.”  
17 Wash. Rev. Code § 49.46.005(1). This latter purpose – the prevention of predatory labor  
18 practices to encourage maximum employment opportunities for state residents – is wholly  
19 missing from the FLSA’s more limited scope. *See* 29 U.S.C. § 202 (declaring the purpose of the  
20 FLSA is to maintain “the minimum standard of living necessary for health, efficiency, and  
21 general well-being of workers”). This broader purpose alone sets FLSA apart from Washington  
22 law.

23 GEO’s reliance on out of circuit cases applying FLSA or the minimum wage laws of  
24 other states does not save its argument. In *Alvarado Guervara v. INS*, the Fifth Circuit found that  
25 detainee-workers held in a federally-owned and operated detention facility were not protected  
26 by FLSA’s minimum wage provisions. 902 F.2d 394, 396 (5th Cir. 1990). To reach this holding,

1 the *Alvarado* court relied upon the fact that “[t]he congressional motive for enacting the  
2 FLSA . . . was to protect the ‘standard of living’ and ‘general well-being’ of the worker in  
3 American industry” and did not include an express inclusion or exemption regarding  
4 incarcerated individuals. *Id.* (citing 29 U.S.C. § 202(a)) Likewise, in *Menocal v. GEO Group,*  
5 *Inc.*, 113 F. Supp. 3d 1125 (D. Colo. 2015), the district court found that detainee-workers were  
6 not “employees” under the Colorado Minimum Wage Act (“CMWA”) due to the particular  
7 structure of the CMWA. *Id.* at 1129-32 (finding that the CMWA only covered four limited  
8 categories of employees). Further, both the *Menocal* court, *id.* at 1129, and the intermediate state  
9 court in *Whyte v. Suffolk Cty. Sheriff’s Dep’t.*, 91 Mass. App. Ct. 1124, 2017 WL 2274618, at  
10 \* 1-2 (May 24, 2017), determined that the purpose of the states’ minimum wage laws were  
11 almost identical to that of the FLSA, i.e., they were limited to supplying the necessary cost of  
12 living and to maintain the health of the workers.

13 In short, broad references to the federal government’s immigration authority or the  
14 application of the FLSA do not displace state laws protecting worker rights and safety. Field  
15 preemption does not provide GEO with a federal defense.

16 **c. GEO does not allege a colorable conflict preemption defense**

17 Finally, GEO fails to show a colorable defense of conflict preemption. “[S]tate laws are  
18 preempted when they conflict with federal law.” *Arizona*, 567 U.S. at 399 (citing *Crosby v. Nat’l*  
19 *Foreign Trade Council*, 530 U.S. 363, 371-72 (2000)). But courts should only find conflict  
20 preemption in instances where (1) “compliance with both federal and state regulations is a  
21 physical impossibility,” and (2) those instances where the challenged state law “stands as an  
22 obstacle to the accomplishment and execution of the full purposes and objectives of Congress[.]”  
23 *Id.* “For conflict preemption to apply, the conflict must be an actual conflict, not merely a  
24 hypothetical or potential conflict.” *Chicanos Por La Causa v. Napolitano*, 558 F.3d 856, 863  
25 (9th Cir. 2009).  
26

1 Here, GEO cannot make a colorable claim that there is a conflict between Washington’s  
2 minimum wage laws and any federal law. GEO can comply with both state and federal laws  
3 governing who it may employ and how much it must pay employees who work at NWDC – just  
4 as it is currently doing with the security officers who staff the facility. Paying the state minimum  
5 wage to the remaining workers who run NWDC creates no actual conflict with federal and state  
6 law.

7 GEO again cites IRCA, stating that all NWDC detainees are “removable aliens” who  
8 GEO is “prevent[ed]” from hiring. Removal Notice at 24. This claimed conflict is wrong for at  
9 least two reasons. First, GEO assumes, without any basis, that all NWDC detainees are  
10 unauthorized to work. Removal Notice at 17. GEO is incorrect, because at least some detainee-  
11 workers (like lawful permanent residents) are lawfully present, have authorization to work, and  
12 may never be found removable at all. *See, e.g.*, 8 U.S.C. § 1226(a) (authorizing detention  
13 “pending decision on *whether* the alien” is removable) (emphasis added).

14 Second, and more importantly, it is *GEO’s responsibility* under IRCA to hire eligible  
15 workers, and GEO’s obligations under IRCA are entirely independent from state law. Simply  
16 put, if Washington’s minimum wage law applies to detainee-workers, GEO will have two  
17 choices: hire detainees who have appropriate work authorization or hire non-detainee  
18 Washington workers to perform the tasks necessary to operate GEO’s business. Either way,  
19 Washington’s claims in no way force GEO to engage in employment practices that conflict with  
20 IRCA. Instead, GEO should follow employment practices that comply with both state and federal  
21 requirements – just like all other employers in Washington.

22 **B. No Substantial and Disputed Federal Issue Provides Grounds for Removal**

23 Defendant argues this action is removable under the general removal statute, 28  
24 U.S.C. § 1441, because the state law claim raises “substantial and disputed federal issues.”  
25 Removal Notice at 18. Defendant’s argument is unpersuasive.  
26

1 In certain cases, federal question jurisdiction will lie over state law claims that “really  
2 and substantially” involve a dispute or controversy respecting the validity, construction, or effect  
3 of federal law. *Grable & Sons Metal Products, Inc. v. Darue Eng’g & Mfg.*, 545 U.S. 308, 314  
4 (2005). For jurisdiction to exist under this rule, the following requirements must be met: (1) the  
5 state law claims must *necessarily* raise a federal issue, (2) that issue must *actually be disputed*;  
6 (3) the *federal interest* in the issue must be *substantial*, or central to the case; and (4) the exercise  
7 of federal jurisdiction must not disturb “any congressionally approved balance of federal and  
8 state judicial responsibilities.” *Gunn v. Minton*, 568 U.S. 251, 258 (2013).

9 Here, none of the requirements is met. Washington’s minimum wage claim does not raise  
10 a substantial federal legal issue – let alone one that is actually disputed. Contrary to GEO’s  
11 suggestion, Washington’s lawsuit does not dispute the federal government’s authority to detain  
12 aliens pursuant to 8 U.S.C. § 1226(a), question the federal government’s authority to contract  
13 with GEO for its services, challenge Congress’s 1979 decision to “reimburse[]” GEO only a  
14 dollar per day for detainee-worker participation on the Volunteer Work Program, or otherwise  
15 “attempt[] to interfere with federal immigration policies.” *Cf.* Removal Notice at 24. To the  
16 contrary, the minimum wage claim requires GEO to pay detainee-workers the state-mandated  
17 wage regardless of whether the detainee-workers’ detention is lawful and regardless of the  
18 amount GEO receives from the federal government as reimbursement. The mere fact that the  
19 federal government has authority over immigration, or that federal law and regulations are  
20 implicated by the background facts, is insufficient to create a “substantial” federal issue. *See*,  
21 *e.g.*, *K2 Am. Corp. v. Roland Oil & Gas, LLC*, 653 F.3d 1024, 1033 (9th Cir. 2011) (rejecting  
22 federal jurisdiction for want of a substantial federal question even though dispute involved  
23 federally authorized “oil and gas leases on tribal lands” and the “very extensive federal  
24 regulatory scheme governing them”); *Gunn*, 568 U.S. at 258 (refusing federal question  
25 jurisdiction over state law claim alleging legal malpractice even when claim turned on attorneys’  
26 handling of a federal patent case); *Berg v. Leason*, 32 F.3d 422, 425 (9th Cir. 1994) (refusing

1 federal jurisdiction even when plaintiff's malicious prosecution claim required proof that  
2 underlying federal securities action was legally untenable); *Quillinan v. Papavassiliou*, No. C12-  
3 04159CRB, 2013 WL 428604 \*3-4 (N.D. Cal. 2013) (holding federal interests regarding a  
4 government-operated housing program to be insufficient for federal jurisdiction).

5 GEO's plea for federal jurisdiction in the name of "national uniformity" is likewise  
6 insufficient to trigger federal jurisdiction. *Cf.* Removal Notice at 29. GEO's mere desire for  
7 consistency in its national business operations is hardly a federal interest. *See Gunn*, 568 U.S. at  
8 260 ("[I]t is not enough that the federal issue be significant to the particular parties in the  
9 immediate suit," because the substantiality inquiry "looks instead to the importance of the issue  
10 to the federal system as a whole."). In fact, ICE expressly contemplates that GEO's obligations  
11 will not be uniform by requiring that GEO comply with all state and local labor laws. Baker  
12 Decl., Ex. A at 44, 52 (requiring compliance with all "state and local laws"). Since no federal  
13 law is in dispute, whether or not detainee-workers are "employees" will continue to depend on  
14 the state law at issue, not on the existence of a federal forum. *See, e.g., Menocal*, 113 F. Supp.  
15 3d at 1129 (relying on Colorado case law and state agency guidance, not federal law, in  
16 determining whether detainee-workers were "employees" under the state's minimum wage law).  
17 Granting GEO a federal forum will do nothing to supply it with the uniform and nationwide  
18 business regulation it seeks.

19 GEO next argues that ICE has a "clear federal interest" in this case because, if GEO were  
20 obligated to pay minimum wage to run its business, "it would significantly affect the prices that  
21 GEO would have to charge for its services." Removal Notice at 23. ICE has not intervened to  
22 present this interest, and, in any event, the negotiated contract between ICE and GEO puts the  
23 burden squarely on GEO to absorb the cost of complying with any new or clarified "statutory"  
24 and "regulatory" constraints. Baker Decl., Ex. A at 44. Although paying Washington workers  
25  
26

1 minimum wage may cut into GEO's profit margin,<sup>6</sup> there is no reason to believe that ICE would  
2 be responsible to bear the cost of this increased expense.

3 The cases cited by GEO also do not support federal jurisdiction. First, resolution of the  
4 quiet-title action in *Grable* required construction of "the meaning of a federal statute" as an  
5 "essential element" of the state law claim. *Grable*, 545 U.S. at 315. Because federal tax matters  
6 are heard nearly exclusively in federal court, it was important that such cases "come before  
7 judges used to federal tax matters." *Id.* Here, none of Washington's claims requires construction  
8 of federal law, and state courts apply minimum wage rules in their normal and routine course of  
9 casework.

10 GEO's citation to *Boyle v. United Technologies, Corp.*, 487 U.S. 500, 502 (1988) is even  
11 less helpful. *Boyle* was brought as a diversity action and the issue of federal question jurisdiction  
12 was never raised. *Id.* More to the point, *Boyle* and its progeny provide military contractors with  
13 a defense "from tort liability that arises as a result of the contractor's compliance with the  
14 specifications of a federal government contract." *Getz v. Boeing Co.*, 654 F.3d 852, 860 (9th Cir.  
15 2011). This defense is strictly limited "to contractors who design and manufacture military  
16 equipment." *Snell v. Bell Helicopter Textron, Inc.*, 107 F.3d 744, 746 n.1 (9th Cir. 1997). GEO  
17 has not – and cannot – raise this defense, and *Boyle* is inapposite.

18 Finally, contrary to GEO's argument, allowing Washington's claims to go forward in  
19 federal court undermines Congress's "intended division of labor between state and federal  
20 courts." *See Shanks v. Dressel*, 540 F.3d 1082, 1093-94 (9th Cir. 2008) (rejecting federal  
21 jurisdiction as contrary to the "sensitive judgment[] about congressional intent"). Federal  
22 question jurisdiction was never meant to create federal jurisdiction by any case against a  
23 government contractor, especially a state minimum wage claim that sits squarely within a state's  
24

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25 <sup>6</sup> In 2016, GEO reported \$2,180,000,000 in revenue from providing private detention  
26 services. *See* <http://www.sn1.com/Interactive/newlookandfeel/4144107/2016-GEO-Annual-Report.pdf>.



1 traditional police powers. *See WSB Elec., Inc. v. Curry*, 88 F.3d 788, 791 (9th Cir. 1996)  
2 (affirming that “[i]t is well settled that wages are a subject of traditional state concern”). GEO’s  
3 argument for removal jurisdiction would result in federal jurisdiction whenever a plaintiff sues  
4 on a state law that tangentially relates to a federal interest. This is not the law.

5 **C. States Are Not “Residents” For Purposes of Diversity Jurisdiction**

6 Defendant’s reliance on diversity to remove this action is equally misplaced.

7 “Neither a state nor a state agency [can] be a party to a diversity action.” *Fifty Ass’ns v.*  
8 *Prudential Ins. Co.*, 446 F.2d 1187, 1191 (9th Cir. 1970). *See also Moor v. Alameda Cty.*, 411  
9 U.S. 693, 717 (1973) (“There is no question that a State is not a ‘citizen’ for purposes of the  
10 diversity jurisdiction.”). As long as the state has a “real interest in the controversy,” *i.e.*, the relief  
11 sought “insures to [the state] alone,” the state’s presence as a party plaintiff will defeat diversity  
12 jurisdiction. *Dep’t of Fair Emp’t & Hous., v. Lucent Tech., Inc.*, 642 F.3d 728, 737 (9th Cir.  
13 2011).

14 In *Nevada v. Bank of America Corp.*, for example, the Nevada Attorney General sued  
15 Bank of America for misleading borrowers about the terms of their mortgage modification and  
16 foreclosure processes in violation of the state’s consumer protection laws. 672 F.3d 661, 664-65  
17 (9th Cir. 2012). After considering “the essential nature and effect of the proceeding,” the Ninth  
18 Circuit held Nevada was a “real party in interest” to the action, which defeated even the minimal  
19 diversity required for federal jurisdiction under the Class Action Fairness Act. *Id.* at 669-72. In  
20 so doing, the Ninth Circuit observed the devastating effect the foreclosure crisis had in Nevada  
21 and found it “unsurprising” that the Nevada Attorney General had a real interest in not only  
22 protecting the integrity of mortgage loan servicing, but also protecting the state’s citizens and  
23 economy from deceptive mortgage practices. *Id.*

1 Here, as in *Nevada*, there is no question that Washington is a “real party in interest” to  
2 this litigation.<sup>7</sup> Washington sues to protect the tens of thousands of detainees who have worked  
3 at the NWDC since 2005 for \$1 per day, the tens of thousands of detainees who will work at that  
4 rate in the future, and the yet-unknown number of non-detained residents who lost out on job  
5 opportunities because of GEO’s use of underpaid detainee-workers to operate its business.  
6 Considering the widespread impact of GEO’s violations, Washington’s prayer for relief seeks  
7 broad declarations that detainee-workers are “employees,” that GEO is an “employer” of  
8 detainee-workers, that GEO has been unjustly enriched, an injunction prohibiting GEO from  
9 paying detainee-workers less than the minimum wage, and disgorgement. Compl. ¶¶ 7.1-7.8.  
10 Washington’s concrete interest in this action extends beyond its general governmental interest.  
11 *See, e.g., Nevada*, 672 F.3d at 670 (observing Nevada had a specific, concrete interest in  
12 eliminating deceptive practices given that it was hard-hit by the mortgage crisis).

13 GEO’s reliance on a single case, *Lucent*, 642 F.3d at 739, to argue otherwise is  
14 unavailing. Removal Notice at 33-37. In *Lucent*, a California state agency filed a discrimination  
15 action “on behalf of a single aggrieved employee” for “reinstatement and payment of  
16 compensatory and punitive damages to the aggrieved individual.” *See Nevada*, 672 F.3d at 670  
17 (distinguishing *Lucent*). In considering the “essential nature and effect of the proceeding as it  
18 appear[ed] from the entire record,” the *Lucent* court held the state agency was not a real party in  
19 interest because the relief sought could have been brought – and was, in fact, brought – by the  
20 individual employee, rendering the state’s interest merely “tangential.” 642 F.3d at 739. By  
21

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22 <sup>7</sup> GEO argues that the Washington Department of Labor & Industries’ (L&I) authority is  
23 “conditional” and limited to “taking assignment of wages.” Removal Notice at 34. But it is  
24 Washington State, and not the individual agency L&I, that brings this action on behalf of its  
25 economy and state residents. *See* Compl. ¶ 2.1. The Attorney General has discretionary authority  
26 to bring actions in any court, federal or state, where there is a cognizable cause of action and  
Washington’s case raises a matter of public concern. *See* Wash. Rev. Code § 43.10.030(1); *City*  
*of Seattle v. McKenna*, 259 P.3d 1087, 1093 (Wash. 2011); *see also State v. Chinook Hotel, Inc.*,  
399 P.2d 8, 9 (Wash. 1965) (minimum wage claim brought by the Attorney General’s office).

1 contrast, the relief Washington here seeks is not the same as the relief sought by private litigants.  
2 *Compare* Compl. ¶¶ 7.1-7.8 with *Chen v. GEO Group, Inc.*, No. 3:17-cv-056769 (WD Wash.  
3 Sep. 26, 2017), ECF 1 at 5 (seeking back pay, damages, and class certification, but not injunctive  
4 relief, declaratory relief, or disgorgement). Unlike in *Lucent*, the State’s interests are substantial  
5 and far from concurrent with the interests of a single aggrieved resident. *See also Nevada*, 672  
6 F.3d at 671 (observing a state’s “strong and distinct interest . . . is further strengthened by the  
7 other forms of relief it seeks.”).

8 Further, even if some detainee-workers or job seekers receive some portion of the  
9 monetary relief sought by Washington, that fact would not render its action removable. *See*  
10 *Nevada*, 672 F.3d at 671 (“Nevada’s sovereign interest in protecting its citizens and economy  
11 . . . is not diminished merely because it has tacked on a claim for restitution”); *see also AU*  
12 *Optronics Corp. v. South Carolina*, 699 F.3d 385, 393 (4th Cir. 2012) (observing the state’s  
13 restitution claims, when included with other claims properly pursued by the state, did not alter  
14 the state’s quasi-sovereign interest in enforcing its own laws); *Arizona ex rel. Horne v.*  
15 *Countrywide Fin. Corp.*, No. cv-11-141-PHX-FJM, 2011 WL 995963 at \*3 (D. Ariz. Mar. 21,  
16 2011) (observing the fact “[t]hat some private parties may receive restitution does not negate the  
17 State’s substantial interest or render the entire action removable”); *Hawaii ex rel. Louie v.*  
18 *Bristol-Myers Squibb Co.*, No. 14-00180-HG-LRP, 2014 WL 3427387 at \*10 (D. Haw. July 15,  
19 2014) (explaining “[d]isgorgement to obtain ill-gotten gains is separate and apart from interests  
20 of particular [individuals] in obtaining restitution and recognizing Hawai’i to be the real party in  
21 interest for purposes of diversity).

22 Finally, GEO argues – without any citation to authority – that this matter is removable  
23 because it is similar to a class action currently pending in this Court. Removal Notice at 30.  
24 GEO’s argument fails. Not only has GEO not moved to relate the actions, GEO ignores that  
25 removal is a jurisdictional question, such that the mere existence of another federal case, or  
26 GEO’s interest in “avoiding double recovery and conflicting outcomes,” *id.*, cannot give rise to

1 diversity jurisdiction. *See Sygenta Crop Prot., Inc. v. Henson*, 537 U.S. 28, 34 (2002) (refusing  
2 to recognize removal jurisdiction despite the existence of a similar federal case in which the state  
3 court plaintiff had intervened).

4 In sum, Washington cannot be its own resident for purposes of diversity when, as here,  
5 its substantial interests in the matter are separate from the interests of any private litigant. By  
6 violating the state minimum wage laws and unjustly enriching itself, GEO depresses  
7 employment opportunities in Washington and threatens both Washington's economic health as  
8 well as the health, safety and welfare of Washington's residents. *See Wash. Rev. Code* §  
9 49.46.005(1)-(3) (setting forth Washington's purpose in setting the minimum wage). Regardless  
10 of the yet-to-be-determined amount the State seeks to disgorge, this Court lacks diversity  
11 jurisdiction over this matter.

#### 12 IV. CONCLUSION

13 For the foregoing reasons, Washington respectfully requests that the Court remand this  
14 action back to state court.

15 DATED this 8th day of November, 2017.

16 Respectfully submitted,  
17 BOB FERGUSON  
18 Attorney General of Washington

19 /s La Rond Baker  
20 LA ROND BAKER, WSBA No. 43610  
21 MARSHA CHIEN, WSBA No. 47020  
22 Assistant Attorneys General  
23 Office of the Attorney General  
24 800 Fifth Avenue, Suite 2000  
25 Seattle, WA 98104  
26 (206) 464-7744  
larondb@atg.wa.gov  
marshac@atg.wa.gov

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**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing document and all supporting declaration with exhibits were electronically filed with the United States District Court using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

DATED this 8th day of November, 2017.

/s La Rond Baker  
LA ROND BAKER